

MEMO

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To: Mary Selkirk, Chair of Bay Delta Advisory Committee, Ecosystem Restoration Work Group

From: California Department of Food and Agriculture

Subject: Comments on Ecosystem Restoration Component of CALFED EIR

Date: December 18, 1996

The California Department of Food and Agriculture has a number of concerns related to the direction the Ecosystem Restoration Program component of the CALFED program appears to be heading. These concerns have been voiced at several of the numerous meetings conducted over the past several months. The purpose of this memo is to document and expand on a few of the most critical of these concerns.

The Ecosystem Restoration element of the CALFED program appears to have lost sight of the legislative intent declared in SB 900, and is developing alternatives which are not only counter to legislative intent and the Governor's solution principals, but also do not meet the minimum requirements for CEQA. This is a formulae for failure.

The purpose of CALFED is to solve problems related to the beneficial uses of the Bay-Delta ecosystem. One of the problems to be solved is ecosystem restoration. The dominate land use in the Delta is agriculture: This is a beneficial use of that system. Thus far the thrust of planning for ecosystem restoration has been to ignore agricultural beneficial use of the system. Ecosystem restoration plans so far show no concern whatsoever for adverse impacts on agriculture....this conflict between program goals and the staff efforts so far, is glaringly obvious, and compromises the entire program. There has been no apparent effort to identify beneficial uses of the system, identify the attributes of the existing environment, design alternatives to achieve the beneficial use goals, avoid impacts on the existing environment, or plan for mitigation of unavoidable impacts.

Like it or not, agriculture is a resource, an element of the environment, and a beneficial use of the system. This runs counter to the dogma of some staff. They are off-base. CEQA has clear instructions for the contents, scope, and focus of an EIR:

1. "Special emphasis should be placed on environmental resources which are rare or unique to that region, and would be affected by the project."
(Guidelines Section 15125 (a).)

- Prime agricultural lands are rare environmental resources.
- The prime agricultural lands of the Delta, and other riparian areas potentially impacted by the program as now conceived, are even more rare and important; in fact they are unique environmental resources, among the most ideal lands in the world for sustainable

agriculture.

- Of particular importance is the inherent abilities of riparian prime agricultural lands, and especially the organic soils of the Delta to support sustainable agriculture and low-input agriculture. The relative input requirements of these lands need to be addressed in relation to the input demands for growing similar crops on other soils. For example, the requirements for fixed nitrogen for grain production on the unique soils of the Delta. The characteristics of the resources which will be impacted largely determines how to adequately mitigate any unavoidable significant impacts.
- There is the opportunity for CALFED to design a sustainable ecosystem in the delta which incorporates both agriculture and ecosystem restoration.

**2. "The EIR shall focus on the significant effects on the environment."
(Guidelines 15143)**

- In the ecosystem restoration program, the focus of EIR scoping, so far has been on a limited subset of the program goals, not the impacts of the program.
- It does not appear that there has been a start at looking at the existing environment (Environmental Setting, Guidelines Section 15125), which is the first step towards identifying resources, impacts, and mitigation measures.
- To the extent there has been discussion of the environmental setting, it has been a limited view of how the Bay-Delta system may have existed in the early nineteenth century, not on the environment which would be impacted by the program. Under CEQA, the environmental setting is "...the environment in the vicinity of the project, as it exists before the commencement of the project..." (Guidelines Section 15125.) The historical perspective is an important consideration for program design, however, for the environmental impact analysis in an EIR the primary focus must be on impacts on the existing environment (Guidelines Section 15126.)
- This lack of focus on the impacts of the proposals is not limited to agricultural resources. For example there is an apparent movement to increase tidal wetlands in the delta. Increasing the volume of the tidal prism is probably the worst single thing that could be done to delta water quality. How does CALFED propose to mitigate that impact?

3. "An EIR must consider a range of reasonable alternatives to the project, or to the location of the project which would feasibly attain *most* of the basic objectives of the project *but would avoid or substantially lessen any of the significant effects of the projects*, and evaluate the comparative merits of the alternatives.....*Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location*

which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” (Guidelines Section 15125 (d), emphasis added)

- As applied to the resource of agriculture and prime agricultural lands, the CALFED EIR must have alternatives which avoid prime agricultural lands. The Notice of Preparation identified a “geographic scope of solution.” This geographic area includes large areas which are not prime farmland, thus siting program facilities to avoid impacts on this resource is within the scope of the program, and appears to be feasible.
- Since this is a programmatic EIR, this may not be entirely possible on a site specific basis. However, to the extent that site-specific alternatives are not defined, the need for a reasonable range of alternatives can be met by setting goals, defining potential mitigation, including standards of adequacy for mitigation, listing criteria for significance for subsequent site-specific Environmental Documents, and setting the policy to accomplish ecosystem restoration goals in locations where avoidance of significant adverse impacts is feasible.
- If, after through analysis, avoidance is not feasible, then the alternatives must include measures to reduce impacts, such as rotating uses of such lands back to agricultural use, as partial mitigation. If planned and managed properly, this could result in soil building and a significant contribution to long-term sustainability and durability of the program.
- To the extent there are still impacts, there must be proposals for additional mitigation (this probably means off-site mitigation), and these mitigation proposals should be formulated prior to alternative selection, not retrofitted afterwards.
- The alternative analysis must give due consideration to an allocation of some program funds to mitigation from the outset. This was anticipated in the enabling legislation.

Failure to meet the minimum requirements of CEQA will have some predictable consequences for the program. First the certification of the EIR will be vulnerable, and this could stop the entire implementation effort. Beyond this, under a programmatic EIR, subsequent implementation projects can proceed without a subsequent EIR only if the significant impacts of the program are avoided or mitigated at the programmatic level. Either way, it would be far wiser to make the effort now to avoid and mitigate adverse effects on the environment and solve the problems related to beneficial use of the bay-delta ecosystem, as SB 900 and CEQA require, rather than proceed in the way you appear to be headed.